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8 One Convention Place
9 701 Pike Street, Ste. 1600
10 Seattle, WA 98101
11 Phone: (206) 315-4001; Fax (206) 315-4004

12 *Counsel for Plaintiff City of Leavenworth*

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF WASHINGTON**

15 CITY OF LEAVENWORTH,
16 a Washington municipal corporation,

17 Plaintiff,

18 v.

19 PROJEKT BAYERN ASSOCIATION,
20 a Washington nonprofit corporation,

21 Defendant.

No. 2:22-cv-00174

22 **DECLARATION OF ETHAN B.**
23 **VODDE IN SUPPORT OF**
24 **PLAINTIFF'S REPLY IN**
25 **SUPPORT OF ITS MOTION**
26 **FOR PRELIMINARY**
INJUNCTION

I, Ethan B. Vodde, declare under penalty of perjury of the laws of the United States of America as follows:

1. I am a resident of the state of Washington and I am over the age of majority. I have personal knowledge of the facts set forth herein and I am competent to testify to the facts set forth herein. I am an attorney for Plaintiff City of

1 Leavenworth (“Plaintiff”) and am authorized to make this Declaration on its behalf. I
2 am familiar with the underlying dispute in this matter, namely between Plaintiff and
3 Defendant Projekt Bayern Association (“PBA”).
4

5 2. On August 24, 2022, I emailed counsel for PBA relevant to PBA’s
6 opposition to an expedited hearing date for Plaintiff’s anticipated Motion for
7 Preliminary Injunction. I attach a true and correct copy of that email hereto as
8
9 **Exhibit A.**

10 3. In that email I relayed Plaintiff’s concession that it would not seek an
11 expedited hearing date if PBA was willing to address certain statements PBA had
12 made publicly.
13

14 4. On August 25, 2022, I emailed counsel for PBA relevant to other
15 comments PBA had made and the scheduled hearing date for the instant motion. I
16 requested, on behalf of Plaintiff, that PBA delete the offending Facebook content. I
17 attach a true and correct copy of that email thread hereto as **Exhibit B.**
18

19 5. I regularly monitor PBA’s Facebook page. I attach true and correct
20 copies of recent posts and comments from PBA’s Facebook page hereto as **Exhibit C.**
21

22 6. I have reviewed the file wrapper relevant to PBA’s application to register
23 LEAVENWORTH OKTOBERFEST with the USPTO. That file wrapper contains
24 office actions issued by the USPTO, including one that defines “OKTOBERFEST”
25
26

1 and included a disclaimer requirement of “OKTOBERFEST.” I attach a true and
2 correct copy of that office action, publicly available on the USPTO’s website, hereto
3 as **Exhibit D**. That file wrapper also contains PBA’s response to that USPTO office
4 action and a response that included a claim of acquired distinctiveness. I attach true
5 and correct copies of PBA’s responses hereto as **Exhibits E and F**.

7 7. I have reviewed the Washington Secretary of State’s website relative to
8 the filings of a “Projekt Bayern Association,” formed in 2009, with a UBI of 602 323
9 799. I attach a true and correct copy of this entity’s “Application to Form a Nonprofit
10 Corporation” publicly available through the Washington Secretary of State’s website
11 hereto as **Exhibit G**.

14 8. I have reviewed PBA’s Response to Plaintiff’s Motion for Preliminary
15 Injunction and the relative supporting declarations, including the Declaration of Steve
16 Lord and the associated Exhibit A. This document is located in the record at ECF No.
17 17-1 at 2. I note that the UBI listed for this entity is 601 771 677.

19 9. My law firm sent a letter to Projekt Bayern on July 26, 2022. I attach a
20 true and correct copy of this letter as **Exhibit H**.

1 I declare under penalty of perjury of the laws of the United States of America that
2 the foregoing is true and correct. Signed this 16th day of September 2022, at Spokane,
3 Washington, via electronic approval and signature below.
4


5 
6 Ethan B. Vodde
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Exhibit A

Ethan Vodde

From: Ethan Vodde
Sent: Wednesday, August 24, 2022 12:15 PM
To: Breitenbucher, James E.; Johanna Tomlinson; Spota, Cali R.
Cc: Rhett Barney; Bob Carlson; Crystal Batson; kkonkright@lukins.com
Subject: RE: City of Leavenworth v Projekt Bayern - Hearing Availability

Hi Jim,

Sorry to intrude on your travel to Peru. Thanks for including Kelly in the cc line here; please forward to any others working on this matter.

Of utmost immediate concern to our client is your client's continued public statements that the City of Leavenworth is not hosting an Oktoberfest this year, which is untrue. To that end, we're willing to schedule a hearing date the 26th or 27th (depending on the Court's availability) if your client is willing to post a "Correction:" to its public-facing Facebook and web pages by Friday, August 25, 2022 that it is your client's understanding that:

"There will be two Oktoberfest celebrations in Central Washington this year: an Oktoberfest in the City of Leavenworth on Sept 30-Oct 1, Oct 7-8, & Oct 14-15, and an Oktoberfest in Wenatchee on the same dates."

Please let us know by EOB tomorrow (Thursday, August 25, 2022) if your client is willing to make this statement. Otherwise, we will move forward with our request for an expedited hearing and we will advise the court that you and your client do not consent.

And please let me know if there's someone else in one of your offices who can interface on this. We look forward to hearing from you.

Best,

Ethan

Ethan B. Vodde | Lee & Hayes
Attorney
Ethan.Vodde@leehayes.com
P 509.944.4684

From: Breitenbucher, James E. <jbreitenbucher@foxrothschild.com>
Sent: Tuesday, August 23, 2022 6:46 PM
To: Johanna Tomlinson <Johanna.Tomlinson@leehayes.com>; Ethan Vodde <Ethan.Vodde@leehayes.com>; Spota, Cali R. <cspota@foxrothschild.com>
Cc: Rhett Barney <RhettB@Leehayes.com>; Bob Carlson <bob@LeeHayes.com>; Crystal Batson <Crystal.Batson@leehayes.com>; kkonkright@lukins.com
Subject: Re: City of Leavenworth v Projekt Bayern - Hearing Availability

[External Email]

Johanna,

We oppose an expedited hearing. As I wrote below, I am currently out of the country on a family vacation. In addition, any preliminary injunction motion that the City plans to file now could have been filed weeks ago when I advised Rhett that my firm would be representing Projekt Bayern. We are available September 26 and 27.

Jim

From: Johanna Tomlinson <Johanna.Tomlinson@leehayes.com>

Sent: Tuesday, August 23, 2022 7:16 PM

To: Breitenbucher, James E.; Ethan Vodde; Spota, Cali R.

Cc: Rhett Barney; Bob Carlson; Crystal Batson

Subject: [EXT] RE: City of Leavenworth v Projekt Bayern - Hearing Availability

Hi Jim,

We propose the following dates:

September 6-9

September 19-23

September 26-28

Recognizing that September 6-9 and September 19-23 would require an expedited hearing, would your client be willing to stipulate to an expedited hearing if any of those dates work for both parties?

Thank you,

Johanna

Johanna Tomlinson | Lee & Hayes

Associate Attorney

Johanna.Tomlinson@leehayes.com

P 509.944.4707

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From: Breitenbucher, James E. <jbreitenbucher@foxrothschild.com>

Sent: Tuesday, August 23, 2022 4:30 PM

To: Ethan Vodde <Ethan.Vodde@leehayes.com>; Spota, Cali R. <cspota@foxrothschild.com>

Cc: Rhett Barney <RhettB@Leehayes.com>; Bob Carlson <bob@LeeHayes.com>; Johanna Tomlinson

<Johanna.Tomlinson@leehayes.com>; Crystal Batson <Crystal.Batson@leehayes.com>

Subject: Re: City of Leavenworth v Projekt Bayern - Hearing Availability

[External Email]

Ethan,

Cali and I are both traveling. I am in Peru so it would be easier to communicate by email. Please send some proposed hearing dates, and we will let you know what works for us.

Thanks,

Jim

From: Ethan Vodde <Ethan.Vodde@leehayes.com>

Sent: Tuesday, August 23, 2022 3:45:17 PM

To: Breitenbucher, James E. <jbreitenbucher@foxrothschild.com>; Spota, Cali R. <cspota@foxrothschild.com>

Cc: Rhett Barney <RhettB@Leehayes.com>; Bob Carlson <bob@LeeHayes.com>; Johanna Tomlinson <Johanna.Tomlinson@leehayes.com>; Crystal Batson <Crystal.Batson@leehayes.com>

Subject: [EXT] City of Leavenworth v Projekt Bayern - Hearing Availability

Dear Jim and Cali:

I'm an associate of Rhett Barney's working on this matter. I left you each a voicemail earlier today concerning availability for hearing dates relevant to a motion for preliminary injunction. Please give me a call; my direct line is 509.944.4684.

Thanks, and hope you're well,

Ethan

Ethan B. Vodde | Lee & Hayes

Attorney

Ethan.Vodde@leehayes.com

P 509.944.4684 | F 509.323.8979

601 West Riverside Avenue, Suite 1400 | Spokane, Washington 99201

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Exhibit B

Ethan Vodde

From: Ethan Vodde
Sent: Thursday, August 25, 2022 12:18 PM
To: Breitenbucher, James E.; Johanna Tomlinson; Spota, Cali R.
Cc: Rhett Barney; Bob Carlson; Crystal Batson; kkonkright@lukins.com; Olszyk, Christopher D.
Subject: RE: City of Leavenworth v Projekt Bayern - Hearing Availability

Hi Jim:

We spoke with the Court and we have a hearing date of September 27th at 10am in Spokane, WA. We'll file the motion shortly.

Best,

Ethan

Ethan B. Vodde | Lee & Hayes
Attorney
Ethan.Vodde@leehayes.com
P 509.944.4684

From: Ethan Vodde
Sent: Thursday, August 25, 2022 12:02 PM
To: Breitenbucher, James E. <jbreitenbucher@foxrothschild.com>; Johanna Tomlinson <Johanna.Tomlinson@leehayes.com>; Spota, Cali R. <cspota@foxrothschild.com>
Cc: Rhett Barney <RhettB@leehayes.com>; Bob Carlson <bob@LeeHayes.com>; Crystal Batson <Crystal.Batson@leehayes.com>; kkonkright@lukins.com; Olszyk, Christopher D. <colszyk@foxrothschild.com>
Subject: RE: City of Leavenworth v Projekt Bayern - Hearing Availability

Hi Jim:

The July 6 Facebook post is not the only publication available to consumers stating the "City is lying" about the City's 2022 Oktoberfest. Your client has continued to make statements that the City is "lying," and reasonable consumers viewing the "Leavenworth Oktoberfest" Facebook page would understand this to be a reference to the "lying" your client posted about on July 6. Here are a few examples of your client's statements (that continue through this week):

Leavenworth Oktoberfest

Mark Metsker the city and chamber already changed Christmas lighting last year. It is now Festival of Lights. The new council and chamber want to new people here complain about everything. They hate traffic they hate that visitors use Safeway. They will be sorry when it starts costing them. TI and making the visitors happy. The new chamber is all about lying and tricking the visitors. Very sad to watch.

Leavenworth Oktoberfest

Lisa Olsen the promoter backed out. Now they are scrambling to try to do something. It takes over a year to plan Oktoberfest. They are lying to kei

Leavenworth Oktoberfest

Chloe Hansen the city will keep lying. They were using a company (se productions). They have backed out. They have no rights to Leavenworth Okt

It also appears there was media coverage concerning the City's 2022 Oktoberfest celebration at least as early as February 3. See <https://www.krem.com/article/life/leavenworth-festivals-events-2022/293-b9997886-648f-45c7-b1db-7d4e059d01bf>. We can explore the facts and law surrounding this issue later, but for now we confirm that the City

wants Projekt Bayern to delete the July 6 Facebook post and additionally delete all other Facebook posts intimating the City is “lying” about hosting a 2022 Oktoberfest or that there will be no 2022 Oktoberfest in Leavenworth.

Notwithstanding, we’re amenable to a September 26 or September 27 hearing date and will be setting it with the Court.

Best,

Ethan

Ethan B. Vodde | Lee & Hayes
Attorney
Ethan.Vodde@leehayes.com
P 509.944.4684

From: Breitenbucher, James E. <jbreitenbucher@foxrothschild.com>
Sent: Thursday, August 25, 2022 11:04 AM
To: Ethan Vodde <Ethan.Vodde@leehayes.com>; Johanna Tomlinson <Johanna.Tomlinson@leehayes.com>; Spota, Cali R. <cspota@foxrothschild.com>
Cc: Rhett Barney <RhettB@Leehayes.com>; Bob Carlson <bob@LeeHayes.com>; Crystal Batson <Crystal.Batson@leehayes.com>; kkonkright@lukins.com; Olszyk, Christopher D. <colszyk@foxrothschild.com>
Subject: RE: City of Leavenworth v Projekt Bayern - Hearing Availability

[External Email]

Ethan,

We assume your email refers to Projekt Bayern’s July 6 Facebook post. As of July 6, the City’s partner for a “yet unnamed October 2022 festival” had withdrawn its participation, and the City had not yet announced it was hosting an “Oktoberfest” in Leavenworth during 2022. Projekt Bayern has no obligation to go back and “correct” statements that were true when made. Nor does Projekt Bayern have any obligation to advertise the City’s event through Projekt Bayern’s communication channels. Nonetheless, Project Bayern is amenable to deleting the July 6 Facebook post to address the City’s concerns.

Please confirm whether the City wants Projekt Bayern to delete the July 6 Facebook post.

If you are interested in further discussing this matter by phone, I can be available tomorrow morning.

Jim Breitenbucher
Fox Rothschild LLP – Seattle
[LinkedIn](#) | [Emerging Tech](#)
206.389.1775 | Mobile 206.384.0785
jbreitenbucher@foxrothschild.com

From: Ethan Vodde <Ethan.Vodde@leehayes.com>
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Of utmost immediate concern to our client is your client's continued public statements that the City of Leavenworth is not hosting an Oktoberfest this year, which is untrue. To that end, we're willing to schedule a hearing date the 26th or 27th (depending on the Court's availability) if your client is willing to post a "Correction:" to its public-facing Facebook and web pages by Friday, August 25, 2022 that it is your client's understanding that:

"There will be two Oktoberfest celebrations in Central Washington this year: an Oktoberfest in the City of Leavenworth on Sept 30-Oct 1, Oct 7-8, & Oct 14-15, and an Oktoberfest in Wenatchee on the same dates."

Please let us know by EOB tomorrow (Thursday, August 25, 2022) if your client is willing to make this statement. Otherwise, we will move forward with our request for an expedited hearing and we will advise the court that you and your client do not consent.

And please let me know if there's someone else in one of your offices who can interface on this. We look forward to hearing from you.

Best,

Ethan

Ethan B. Vodde | Lee & Hayes

Attorney

Ethan.Vodde@leehayes.com

P 509.944.4684

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Johanna,

We oppose an expedited hearing. As I wrote below, I am currently out of the country on a family vacation. In addition, any preliminary injunction motion that the City plans to file now could have been filed weeks ago when I advised Rhett that my firm would be representing Projekt Bayern. We are available September 26 and 27.

Jim

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Hi Jim,

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September 6-9

September 19-23

September 26-28

Recognizing that September 6-9 and September 19-23 would require an expedited hearing, would your client be willing to stipulate to an expedited hearing if any of those dates work for both parties?

Thank you,

Johanna

Johanna Tomlinson | Lee & Hayes
Associate Attorney
Johanna.Tomlinson@leehayes.com
P 509.944.4707

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[External Email]

Ethan,
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Thanks,
Jim

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Sent: Tuesday, August 23, 2022 3:45:17 PM
To: Breitenbucher, James E. <jbreitenbucher@foxrothschild.com>; Spota, Cali R. <cspota@foxrothschild.com>
Cc: Rhett Barney <RhettB@Leehayes.com>; Bob Carlson <bob@LeeHayes.com>; Johanna Tomlinson <Johanna.Tomlinson@leehayes.com>; Crystal Batson <Crystal.Batson@leehayes.com>
Subject: [EXT] City of Leavenworth v Projekt Bayern - Hearing Availability

Dear Jim and Cali:

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Thanks, and hope you're well,

Ethan

Ethan B. Vodde | Lee & Hayes

Attorney

Ethan.Vodde@leehayes.com

P 509.944.4684 | F 509.323.8979

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Exhibit C

9/16/22, 3:15 PM

(2) Leavenworth Oktoberfest | Facebook

facebook



Leavenworth Oktoberfest

steal

Posts You've Seen

Most Recent

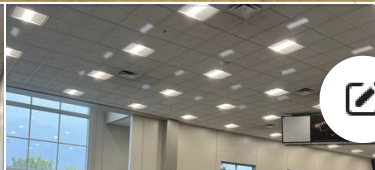
Tagged Location

Date



Leavenworth Oktoberfest

14 more days till leavenworth Oktoberfest in Wenatchee.



<https://www.facebook.com/page/124448264249123/search/?q=steal>

1/5

9/16/22, 3:15 PM

(2) Leavenworth Oktoberfest | Facebook

facebook

**Steve Lord**

Yesterday at 5:28 AM · 🌐

What a great night. It was great seeing all of the Oktoberfest team last night. Hard to believe it has been 3 years. Big thanks to all who showed up and to the town Toyota center for being so helpful. It is like night and day dealing with Wenatchee. They get tourism and business. I don't know why anyone would work with the city of leavenworth after seeing what they did to a group that has done more for Leavenworth than they have ever done. The city and chamber are trying to steal an event that they have never put a penny or any time into. Hope every group sees what they have done. They have shown groups that if they spend time building an event the city will lie and steal to take it away. Very disgusting to watch. But that's the way our mayor and council work.



Lasterbacher Band and 53 others

12 Comments 3 Shares



Like



Share



Leavenworth Oktoberfest limited who can comment on this post.

All comments ▼

**Tim Hogg**

It's time to stop complaining about the terrible political scene in Leavenworth and start really promoting your event and how incredible it is going to be. You accomplished a massive undertaking and I think it gets sullied a bit by consistently throwing shade at the issue. Everyone knows now. It's time to Take the high road

And tell everyone about all the awesome.

We are definitely coming to YOUR event!



Like Page responded privately 8h

**Greg Forinash**

Looks awesome! Has anyone gotten the figures of what the city and chamber of commerce are paying the producers of that other event?



Like Page responded privately 8h

**Lisa Woodard**

As an outsider to your drama it will be interesting to stay in Leavenworth and enjoy the great atmosphere that is enjoyed year round and go to your event - hopefully you are interested in feedback?



Like 8h

**Nick Price**

Oh this atmosphere does not deserve the Leavenworth name to be attached to it



9/16/22, 3:15 PM

(2) Leavenworth Oktoberfest | Facebook

facebook



I'm coming for the first time ever this year, as a visitor and first-timer, I didn't need to know this nor did I want to.

Like 8h



Jessica Marshall
Chelsie Wilsey

Like 8h



Alan Moen

The original Oktoberfest starts September 17 this year in Munich and ends October 2.

Like 8h



Jonathan Peters

Leavenworth Oktoberfest in Wenatchee... why not Wenatchee Oktoberfest ?

Like Page responded privately 7h



Leavenworth Oktoberfest



September 1 at 6:30 AM · 🌐

We are so excited for our entertainment line-up this year! Can't wait to see all our favorites back on stage! See you all soon...only 29 days until the doors open to the Leavenworth Oktoberfest in our new location at the Wenatchee Town Toyota Center! Shuttle schedules have also been posted on our website

2022 LEAVENWORTH OKTOBERFEST ENTERTAINMENT SCHEDULE

FRIDAY, SEPTEMBER 30

FESTHALLE 6:30pm - 1am	BIER STUBBE 6:00pm - 11pm
6:30 - 7:25 Silver Stars	6:00 - 7:00 Beer Barrels
7:45 - 8:40 Happy Hans	7:20 - 8:20 S-Bahn
9:00 - 9:55 Beer Barrels	8:40 - 9:40 Happy Hans
10:15 - 11:10 S-Bahn	10:00 - 11:00 Happy Hans
11:30 - 1:00 The Gordanairs	

**L-BOW THE CLOWN EACH SATURDAY BETWEEN 11AM-9PM
LEAPIN' LOUIE FRIDAY 6PM-9PM AND SATURDAY NOON-8PM**

FRIDAY, OCTOBER 1

FESTHALLE Noon - 1am	BIER STUBBE 1:00pm - 11pm
1:20 Parade and Keg	1:20 - 2:10 Happy Hans
Tapping	2:10 - 2:40 Leavenworth Edelweiss
Musikkapella	2:40 - 3:25 Happy Hans
Beer Barrels	3:45 - 5:20 S-Bahn
Enzian Schuhplattler	5:20 - 5:50 Leavenworth Edelweiss
Beer Barrels	5:50 - 7:25 The Gordanairs
STEIN HOLDING CONTEST	7:45 - 9:20 Beer Barrels
	9:40 - 11:00 Silver Stars

2022 LEAVENWORTH OKTOBERFEST ENTERTAINMENT SCHEDULE

FRIDAY, OCTOBER 7

FESTHALLE 6:30pm - 1am	BIER STUBBE 6:00pm - 11pm
6:30 - 7:25 Happy Hans	6:00 - 7:00 Beer Barrels
7:45 - 8:40 The Gordanairs	7:20 - 8:20 S-Bahn
9:00 - 9:55 Beer Barrels	8:40 - 9:40 Happy Hans
10:15 - 11:10 S-Bahn	10:00 - 11:00 The Gordanairs
11:30 - 1:00 Silver Stars	

**L-BOW THE CLOWN EACH SATURDAY BETWEEN 11AM-9PM
LEAPIN' LOUIE FRIDAY 6PM-9PM AND SATURDAY NOON-8PM**

SATURDAY, OCTOBER 8

FESTHALLE Noon - 1am	BIER STUBBE 1:00pm - 11pm
12:00 - 1:20 Parade and Keg	1:20 - 2:10 Happy Hans
Tapping	2:10 - 2:40 Leavenworth Edelweiss
Musikkapella	2:40 - 3:25 Happy Hans
Silver Stars	3:45 - 5:20 S-Bahn
Leavenworth Edelweiss	5:20 - 5:50 Leavenworth Edelweiss
Silver Stars	5:50 - 7:25 The Gordanairs
STEIN HOLDING CONTEST	7:45 - 9:20 Beer Barrels
Happy Hans	9:40 - 11:00 Silver Stars
Leavenworth Edelweiss	
S-Bahn	

2022 LEAVENWORTH OKTOBERFEST ENTERTAINMENT SCHEDULE

FRIDAY, OCTOBER 14

FESTHALLE 6:30pm - 1am	BIER STUBBE 6:00pm - 11pm
6:30 - 7:25 The Gordanairs	6:00 - 7:00 Silver Stars

<https://www.facebook.com/page/124448264249123/search/?q=steal>

3/5

9/16/22, 2:27 PM

(1) Leavenworth Oktoberfest | Facebook

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Home

Michael Muller
Dewey Nelson NO. I know its confusing

Like Reply 6w

Dewey Nelson
Michael Muller I dont know who or why they changed it but sometimes in my oldening age its best to leave well enough alone!

Like Reply 6w

Michael Muller
Dewey Nelson Well I am 64 years old and have been going to every festival since I was a kid. My father passed away one year ago and he loved Levinworth. We are going to October fest just so I can dress up and do the chicken dance with my 83 year old mother.

This is the best description of why Leavenworth changed. I did not right this. But heard the same thing from a bed and breakfast owner in leavenworth.

As you all have heard Leavenworth Oktoberfest is now in Wenatchee. The chamber and city in Leavenworth are lying to the visitors. Leavenworth Oktoberfest is owned by Projekt Bayern. The mayor decided to not sign permits and is trying to steal an event the city has never put anything into. This is how Carl is. Never does anything on his own. They are lying to keep hotel rates up. There is no Oktoberfest in leavenworth. I Repeat there is no Oktoberfest in Leavenworth this year. If you are staying in Leavenworth and your hotel has said there is an Oktoberfest they are lying also. They all have been informed that Oktoberfest is in Wenatchee. We will have shuttles from Leavenworth to Wenatchee so people can still stay in Leavenworth. But if they are charging festival rates there is no festival in Leavenworth. Have a great day. I have deleted the complainers that live in leavenworth. This post is to inform visitors what is really happening.

Like Reply 6w

Donna Tim
the one in Leavenworth is more of a street fair than Oktoberfest. spread the word.

Like Reply 6w

Reply to Dewey Nelson...

Michael Muller
Looking forward to it. It is a family tradition over 50 years.

https://www.facebook.com/oktoberfestWA/

70/76

9/16/22, 2:32 PM

(1) Leavenworth Oktoberfest | Facebook

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Trevor Olson

Janet Jenkins and coinless parking meters everywhere! I'm not getting an app with personal info on it to park!!

...

Like Reply 2w



Janet Jenkins

Trevor Olson agree. Not what it use to be

...

Like Reply 2w



Reply to Trevor Olson...



Gary McGuire

Great opportunity for Uber and Lift drivers...

...

Like Reply 2w



Lance Bohren

I'm so confused 🤔 is it in Leavenworth or Wenatchee?

...

Like Reply 2w



Sallie Berg

Lance Bohren Agree. We are staying in Leavenworth but where is oktoberfest? Never been, so am confused.

...

Like Reply 1w



Leavenworth Oktoberfest

Sallie Berg the Leavenworth Oktoberfest that has been happening for 23 years is in Wenatchee. Some Wenatchee hotels have free shuttles. Leavenworth taxi and shuttle is offering a shuttle from Leavenworth to Wenatchee and back for 20 per person each way. If you are coming for the Leavenworth Oktoberfest that everyone comes for I would stay in Wenatchee and go to Leavenworth on Sunday on my way home. Have a great time.

...

Like Reply 1w



Sallie Berg

Leavenworth Oktoberfest thank you!

...

Like Reply 1w



Garth Donald

There will be fun Oktoberfest activities in Leavenworth all three weekends! I think this one is a satellite event so folks in Wenatchee can also enjoy the festivities?

...

Like Reply 1w



Kevin Kane

When will Wenatchee go with the Bavarian look storefronts ? With that they can own the Christmas tree lighting too.

...

Like Reply 1d



Christy Cox

...

<https://www.facebook.com/oktoberfestWA/>

35/64

9/16/22, 2:32 PM

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Lasterbacher Band, Party Kryner and 55 others

45 Comments 13 Shares



Like



Comment



Share

All comments ▾



Write a comment...

**Dalton Cunningham**

I wonder what the one this year in the town Toyota center in Wenatchee will get rated, maybe you can put a projector up and show pictures of Leavenworth.

...

Like

Reply

Page responded privately 3w Edited



8

**Mark Metsker**

Wenatchee Oktoberfest. Let me know when it is back in Leavenworth. Been going for 15 yrs., but not anymore. Love Wenatchee, but it's not Bavarian enough. Why is it someone always has to ruin a good thing. When is the Christmas festival moving and where to?

...

Like

Reply

3w

**Leavenworth Oktoberfest**

Mark Metsker the city and chamber already changed Christmas lighting last year. It is now Festival of Lights. The new council and chamber want to cut tourism to make their neighbors happy. The new people here complain about everything. They hate traffic they hate that visitors use Safeway. They will be sorry when it starts costing them. The original locals see the importance of tourism and making the visitors happy. The new chamber is all about tricking the visitors. Very sad to watch.

...

Like

Reply

3w

Edited

**Daniel Rodriguez**

With as much drama as I've seen on these posts they might as well make a reality tv show or Netflix documentary on this lol

...

Like

Reply

4w



15

**Stone Malone**

Since it's not in actually in leavenworth i think I'll be at Gruff Brewing Company in Bellingham

...

Like

Reply

4w



2

**Kevin Roemhildt**

The only good Oktoberfest is in Mt. Angel Oregon

...

Like

Reply

4w



2

**Nancy Harder Perry**

Kevin Roemhildt Kirkland Oktoberfest is great too!

...

<https://www.facebook.com/oktoberfestWA/>

47/64

9/16/22, 2:34 PM

(1) Leavenworth Oktoberfest | Facebook

facebook



Wayne VandeKrol
Car cruise? ...

Like Reply 9w



Ruth Nelson
Since it's now in Wenatchee you should stop false advertising and change the name! ...

Like Reply 9w



Casey Ford
Ruth Nelson that is the registered name of the Festival. It's not false that is it's name. The Mayor of Leavenworth did not renew the festivals contract with the city and Wenatchee invited the festival to town and is hosting it. ...

Like Reply 9w



Casey Ford
Feel free to contact Carl Florea
Mayor of Leavenworth and let him know you would like him to renew the Oktoberfest contract and hold it in Leavenworth.
cflorea@cityofleavenworth.com
(509) 548-5275 Ext. 125 ...

Like Reply 9w



Dan Benjamin
Liberal Leavenworth mayor has cancelled Oktoberfest in Leavenworth. Wenatchee picked it up. ...

Like Reply 9w



Jayme Miller
Dan, it has nothing to do with left or the right. Not everything has to do with politics. The Chamber simply doesn't want the crowds ...

Like Reply 9w



↳ 8 Replies



Richard McLaughlin
Dan Benjamin "ErMaHGerD! LeFTisT MaYoR" is how you heavy breathers sound. ...

Like Reply 9w



↳ View 2 more replies



Nick Price
You really should put in your post that it's in wenatchee not in leavenworth ...

Like Reply 9w Edited



Chris Pribbernow
Nick Price These organizers moved their festival to Wenatchee. However, Leavenworth will still be holding Oktoberfest, too. ...

Like Reply 8w



Cathy Hughes ...

<https://www.facebook.com/oktoberfestWA/>

90/96

9/16/22, 2:38 PM

(1) Leavenworth Oktoberfest | Facebook

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Like Reply 6w

Karen Helmold
Yenelli Anderson Thank you

Like Reply 6w

Yenelli Anderson
Karen Helmold it would be nice if there was extended service, but that would give vacationers and visitors plenty of time to enjoy both the lake and take in the O'fest! I like the idea of lodging in Chelan!

Like Reply 6w

Reply to Karen Helmold...

George M. Arnold
If you don't want the Oktoberfest in your town then you can't have your name on it! Period!!

Like Reply 27w

Leavenworth Oktoberfest
George M. Arnold do some reading. We want the Oktoberfest in Leavenworth the Mayor does not!

Like Reply 27w

George M. Arnold
Leavenworth Oktoberfest I understand that and I want it in Leavenworth. The town is perfect for it. The architecture, scenery and community makes the experience. But if it's not in the town of Leavenworth then the town name shouldn't be on it. Trust me, I'm still going.

Like Reply 26w Edited

Heather Johnson
Leavenworth Oktoberfest recall election? Yet another dictator in WA. I agree with George above.

Like Reply 26w

Sylv Rangel-Vbv
Leavenworth Oktoberfest I apologize if this was already proposed in the comment section, but is there a board of trustees responsible that can over throw the city council/mayor's decision for this? Has anyone started a petition?
I do respect that you guys are trying to be amicable and flexible, but I also agree with others that if we are going to stick to tradition, location should be a part of that tradition as well. Viel glück!! 🍀

Like Reply 26w

Cyndi Shelby Manka
George M. Arnold well the reason that they aren't holding it there for one is because idiots trash the town with garbage, drunken behavior. Noise. Etc.

Like Reply 26w

<https://www.facebook.com/oktoberfestWA/>

109/125

9/16/22, 2:58 PM

(1) Leavenworth Oktoberfest | Facebook

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Annie Dee

Michael Muller 100% agree - it takes just a few bad eggs in powerful positions to hate tourists enough to want to slow the pace down.

Sadly that town wouldn't have survived if not for the genius idea of everything looking European-
Let's hope they vote in folks that want to continue growing this town in the hills-

Like Reply 22w

William McCoy

John Roberts they cancelled the official L'worth one. That's why it moved.

Like Reply 22w

Reply to John Roberts...



Robert C McLaughlan

Just being in leavenworth a few weeks ago i was told this from more than one shop owner.They are still having Oktoberfest in leavenworth. The name has been taken by the promoter and moved to Wenatchee because the town and the promoter couldn't come to terms. So yes still go to leavenworth like you have for years and support their local shops.

Like Reply 22w



Leavenworth Oktoberfest

Robert C McLaughlan no they are not. They are doing a family street fair. It will not be anything like Oktoberfest

Like Reply 22w



Robert C McLaughlan

Leavenworth Oktoberfest Whatever

Like Reply 22w



Tj Freeby

Robert C McLaughlan Sounds like the event that happened last year. We went, and it was pretty lame. The sidewalks were rolled up by 7pm. No live music sparing a few random buskers. Zero vibe.

Like Reply 22w



Teresa Boxleitner

Works for me, then I can just go enjoy Leavenworth without the hassles and traffic

Like Reply 22w

↪ 3 Replies



Robert C McLaughlan

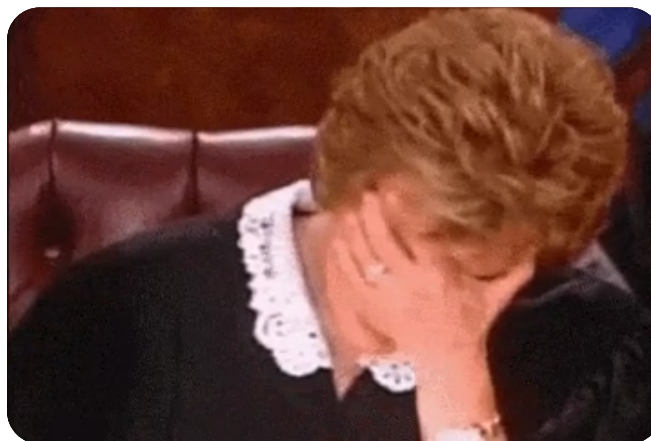
<https://www.facebook.com/page/124448264249123/search/?q=mclaughlan>

3/13

9/16/22, 3:02 PM

(1) Leavenworth Oktoberfest | Facebook

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Like Reply 9w



Reply to Becca Wiederrich...



Gary McLeod

Shame on you leavenworth mayor and city council.
If you had been from around here you would realize the significance of traditions.... [See more](#)

...

Like Reply 36w Edited



3



Jean Peterson

Mount Angel has a great Oktoberfest. Come check it out.

...

Like Reply 36w



5



Leavenworth Oktoberfest

Jean Peterson they do a nice Oktoberfest. But it isn't the Leavenworth Oktoberfest that everyone loves. The visitors that have come for years will be very happy with the changes. According to the feed back we are getting it is going to be a bigger event with room to grow in Wenatchee. Before you know it Wenatchee will start to look more Bavarian. Have a great day

...

Like Reply 36w



6



Sharon Crites

WOW, still can't believe the admin did this. I won't be back to Leavenworth, and several other folks I know won't support them until they get their act together.

...

<https://www.facebook.com/page/124448264249123/search/?q='jean peterson'>

2/15

9/16/22, 3:23 PM

(3) Leavenworth Oktoberfest | Facebook

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Like Reply 22w

**Teresa Boxleitner**

Works for me, then I can just go enjoy Leavenworth without the hassles and traffic

...

Like Reply 22w



↳ 3 Replies

**Robert Forehand**

Isn't it time to rename this event? Why promote a town who no longer wants to be associated with this event?

Heck, I'd suggest that people boycott the town while this event is being hosted. Why give their local businesses the funds for lodging, restaurants, etc.?

...

By all means, visit them any other time of the year, but during this event, that town should be empty.

Like Reply 22w

**Leavenworth Oktoberfest**

Robert Forehand the nonprofit Projekt Bayern owns leavenworth Oktoberfest. They have spent 23 years branding the name. Leavenworth Oktoberfest is known all over the world. We will always use the name it is ours. People that have experienced leavenworth Oktoberfest will come to it wherever it is. The city is trying to trick the visitors to keep lodging taxes up. You are right people should not stay in leavenworth during October. The town will then see the importance of the festival.

...

Like Reply 22w

**Robert Forehand**

Leavenworth Oktoberfest I can appreciate that you want to keep the brand that you have built over two decades. I really do not want to see the current mayor benefit in anyway way by sending this beloved festival out of town, yet still see the town receive a financial gain.

...

Like Reply 22w

**Terry A Wiyrick**

Why stay in Leavenworth for Oktoberfest when the mayor and his cronies ran it out of town? They kick the event to the curb; they deserve to lose all if the revenue from that event and see how long he keeps his job!

...

Like Reply 22w



↳ 3 Replies

**Meghan Stevens**

Bradley Stevens we should plan on going on one of these weekends!

...

Like Reply 22w



↳ 1 Reply

<https://www.facebook.com/page/124448264249123/search/?q=forehand>

3/9

Exhibit D

To: Projekt Bayern Association (johns@sobbalaw.com)
Subject: U.S. TRADEMARK APPLICATION NO. 87018344 - LEAVENWORTH OKTOBERFEST - 0051-000601
Sent: 1/13/2017 11:05:08 AM
Sent As: ECOM108@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87018344

MARK: LEAVENWORTH OKTOBERFEST

87018344

CORRESPONDENT ADDRESS:

JOHN W. SOBBA

SOBBA LAW GROUP PLLC

2018 WOODRIDGE STREET

WENATCHEE, WA 98801

CLICK HERE TO RESPOND TO THIS LETTER:

http://www.uspto.gov/trademarks/teas/response_forms.jsp

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APPLICANT: Projekt Bayern Association

CORRESPONDENT'S REFERENCE/DOCKET NO :

0051-000601

CORRESPONDENT E-MAIL ADDRESS:

johns@sobbalaw.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE MIDNIGHT **EASTERN TIME** OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 1/13/2017

INTRODUCTION

This Office action is in response to applicant's communication filed on December 13, 2016 .

In a previous Office action(s) dated August 25, 2016, the trademark examining attorney refused registration of the applied-for mark based on the following: failure to show the applied-for mark in use in commerce with any of the specified goods and geographic descriptiveness under Section 2(e)(2). In addition, applicant was required to satisfy the following requirement(s): submit an additional fee for failure to comply with the TEAS Plus requirements.

The following refusal(s) have also been obviated: Section 2(e)(2) refusal. *See* TMEP §§713.02, 714.04.

The requirements for an acceptable specimen in International Class 25 and additional fee for failure to comply with the TEAS Plus requirements are maintained and continued.

Disclaimer

Applicant must disclaim the wording “OCTOBERFEST” because it is a generic designation for applicant’s services and is thus an unregistrable component of the mark. *See* 15 U.S.C. §§1052(e)(1), 1056(a); *In re Am. Inst. of Certified Pub. Accountants*, 65 USPQ2d 1972, 1981-85 (TTAB 2003); TMEP §§1212.02(e), 1213.03(b).

Determining whether a mark is generic requires a two-step inquiry:

- (1) What is the genus of services at issue?
- (2) Does the relevant public understand the designation primarily to refer to that genus of services?

H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc., 782 F.2d 987, 989-90, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Meridian Rack & Pinion*, 114 USPQ2d 1462, 1463 (TTAB 2015) (citing *In re 1800Mattress.com IP, LLC*, 586 F.3d 1359, 1363, 92 USPQ2d 1682, 1684 (Fed. Cir. 2009)); TMEP §1209.01(c)(i).

Regarding the first part of the inquiry, the genus of services is often defined by an applicant’s identification of services. *In re Meridian Rack & Pinion*, 114 USPQ2d at 1463 (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 640, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991)).

In this case, the application identifies the services as “Entertainment services in the nature of organizing and conducting cultural festivals featuring food, beverages, alcohol, live musical performances and entertainment for children and adults,” which adequately defines the genus at issue.

Regarding the second part of the inquiry, the relevant public is the purchasing or consuming public for the identified services. *Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013) (citing *Magic Wand Inc. v. RDB Inc.*, 940 F.2d at 640, 19 USPQ2d at 1553). In this case, the relevant public comprises ordinary consumers, because there are no restrictions or limitations to the channels of trade or classes of consumers. The attached evidence from dictionary.com shows that the wording “OCTOBERFEST” in the applied-for mark refers to a type of festival and thus the relevant public would understand this designation to refer primarily to the genus of services.

All generic names of a product or service are not registrable and belong in the public domain for competitors to use. *See In re Women’s Publ’g Co.*, 23 USPQ2d 1876, 1877 (TTAB 1992) (citing *In re Sun Oil Co.*, 426 F.2d 401, 404, 165 USPQ 718, 719 (C.C.P.A. 1970) (Rich, J., concurring)). The disclaimer of unregistrable matter does not affect the appearance of the mark; that is, a disclaimer does not physically remove the disclaimed matter from the mark. *See Schwarzkopf v. John H. Breck, Inc.*, 340 F.2d 978, 978, 144 USPQ 433, 433 (C.C.P.A. 1965); TMEP §1213.

If applicant does not provide the required disclaimer, the USPTO may refuse to register the entire mark. *See In re Stereotaxis Inc.*, 429 F.3d 1039, 1040-41, 77 USPQ2d 1087, 1088-89 (Fed. Cir. 2005); TMEP §1213.01(b).

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use “OCTOBERFEST” apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

/arademacher/
April L. Rademacher
Examining Attorney
USTPO
Law Office 108
571-270-3353
april.rademacher@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailling date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

http://www.dictionary.com/browse/oktoberfest 01/13/2017 11:03:05 AM

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Oktoberfest

definitions

CITE

Oktoberfest

or **Oktoberfest**

[ok-toh-ber-fest] /ok'tou bər,fest/

Spell

Syllables

Word Origin

Examples

noun


1.

a traditional festival held each [October](#) in Munich, Germany.

2.

any similar festival held usually in the autumn.

Origin of Oktoberfest



German

http://www.dictionary.com/browse/oktoberfest 01/13/2017 11:03:05 AM



< German; see October, fest

Dictionary.com Unabridged
Based on the Random House Dictionary, © Random House, Inc. 2017.
[Cite This Source](#)

Examples from the Web for Oktoberfest
Contemporary Examples

- But on day two, I discover the trick keeping many *Oktoberfest* revelers afloat despite their grueling alcohol intake.
[My Two-Day Oktoberfest Bender](#) [Kristyn Ostman](#) October 4, 2013
- Recipe Get a jump start on *Oktoberfest* festivities with this German dish—lederhosen optional.
[Fresh Picks Kurt Gutenbrunner](#) September 9, 2009

Historical Examples

- The *Oktoberfest* starts on Friday and continues for sixteen days.
[Unborn Tomorrow](#) [Dallas McCord Reynolds](#)
- These statistics I read on the *Oktoberfest* in the Munich tourist pamphlets.
[Unborn Tomorrow](#) [Dallas McCord Reynolds](#)

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8 Wintery Words



8 Words for Celebration

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8 Offbeat Literary Genres to Get...

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Recall the pieces of our favorite...

ence Between Discreet and Discrete?

uses of these two commonly confused homophones.

What Character Was Removed from the Alphabet?

What mistaken pronunciation gave this character its name?

Apostrophes 101


This small mark has two primary uses: to signify possession or omitted letters.


How Do I Get a Word into the Dictionary?

People invent new words all the time, but which ones actually make it?

Word of the Day

<http://www.dictionary.com/browse/oktoberfest> 01/13/2017 11:03:05 AM


Difficulty index for Oktoberfest



Few English speakers **likely** know this word

Word Value for Oktoberfest

0

0

Scrabble Words With Friends


Nearby words for oktoberfest

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[okra](#)
[okri](#)
[okt cell](#)
[okta](#)
oktoberfest
[okuninushi](#)
[ol](#)
[ol' man river](#)
[ol](#)
[ola](#)

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To:	Projekt Bayern Association (johns@sobbalaw.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 87018344 - LEAVENWORTH OKTOBERFEST - 0051-000601
Sent:	1/13/2017 11:05:09 AM
Sent As:	ECOM108@USPTO.GOV
Attachments:	

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **1/13/2017** FOR U.S. APPLICATION SERIAL NO. 87018344

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **1/13/2017** (*or sooner if specified in the Office action*). A response transmitted through the Trademark Electronic Application System (TEAS) must be received before midnight **Eastern Time** of the last day of the response period. For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the TEAS response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that

closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay “fees.”

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the “United States Patent and Trademark Office” in Alexandria, VA; or sent by e-mail from the domain “@uspto.gov.” For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

Exhibit E

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1957 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87018344
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/87018344/large
LITERAL ELEMENT	LEAVENWORTH OKTOBERFEST
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use OKTOBERFEST apart from the mark as shown.
PAYMENT SECTION	
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	225
TOTAL FEES DUE	225
SIGNATURE SECTION	
RESPONSE SIGNATURE	/John Sobba/
SIGNATORY'S NAME	John Sobba
SIGNATORY'S POSITION	Attorney
SIGNATORY'S PHONE NUMBER	2068773382
DATE SIGNED	01/23/2017
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jan 23 21:50:06 EST 2017
TEAS STAMP	USPTO/ROA-XX.XX.XX.XXX-20 170123215006337515-870183 44-58043a4a761f8b61ad5d92 9ee8cb361e8047e494fbde547 e5675ec3f5bac2fb297-CC-82 00-20170123214432143347

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1957 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **87018344** LEAVENWORTH OKTOBERFEST(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/87018344/large>) has been amended as follows:

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use OKTOBERFEST apart from the mark as shown.

FEE(S)

Fee(s) in the amount of \$225 is being submitted.

SIGNATURE(S)

Response Signature

Signature: /John Sobba/ Date: 01/23/2017

Signatory's Name: John Sobba

Signatory's Position: Attorney

Signatory's Phone Number: 2068773382

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

RAM Sale Number: 87018344

RAM Accounting Date: 01/24/2017

Serial Number: 87018344

Internet Transmission Date: Mon Jan 23 21:50:06 EST 2017

TEAS Stamp: USPTO/ROA-XX.XX.XX.XXX-20170123215006337

515-87018344-58043a4a761f8b61ad5d929ee8c

b361e8047e494fbde547e5675ec3f5bac2fb297-

CC-8200-20170123214432143347

RAM SALE NUMBER: 87018344
RAM ACCOUNTING DATE: 20170124

INTERNET TRANSMISSION DATE:
2017/01/23

SERIAL NUMBER:
87/018344

Description	Fee Code	Transaction Date	Fee	Number Of Classes	Total Fees Paid
	7007	2017/01/23	225	1	225

Exhibit F

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87018344
LAW OFFICE ASSIGNED	LAW OFFICE 108
MARK SECTION	
MARK	https://tmng-al.uspto.gov/resting2/api/img/87018344/large
LITERAL ELEMENT	LEAVENWORTH OKTOBERFEST
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
GOODS AND/OR SERVICES SECTION (025)(current)	
INTERNATIONAL CLASS	025
DESCRIPTION	Baseball caps; Hats; Shirts; T-shirts
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/1998
FIRST USE IN COMMERCE DATE	At least as early as 08/01/1998
GOODS AND/OR SERVICES SECTION (025)(proposed)	
INTERNATIONAL CLASS	025
DESCRIPTION	Baseball caps; Hats; Shirts; T-shirts
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 08/01/1998
FIRST USE IN COMMERCE DATE	At least as early as 08/01/1998
STATEMENT TYPE	"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] OR "The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use" [for an application based on Section 1(b) Intent-to-Use]. OR "The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use" [for an illegible specimen].
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT17\IMAGEOUT 17\870\183\87018344\xml7\ RFR0002.JPG
SPECIMEN DESCRIPTION	T-shirt with the applied for mark "LEAVENWORTH OKTOBERFEST" inserted within a banner at the bottom third of an oblong shaped picture with a Bavarian hat on top of the picture, mountains in the background of the picture and with two beer mugs situated over a blue and white checkered base in the foreground. Below the

	applied for mark "LEAVENWORTH OKTOBERFEST" is situated the organization's name "Projekt Bayern" and location.
GOODS AND/OR SERVICES SECTION (041)(no change)	
SIGNATURE SECTION	
DECLARATION SIGNATURE	/John W Sobba/
SIGNATORY'S NAME	John W Sobba
SIGNATORY'S POSITION	Attorney
SIGNATORY'S PHONE NUMBER	2068773382
DATE SIGNED	02/27/2017
RESPONSE SIGNATURE	/John W Sobba/
SIGNATORY'S NAME	John W Sobba
SIGNATORY'S POSITION	Attorney
SIGNATORY'S PHONE NUMBER	2068773382
DATE SIGNED	02/27/2017
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Feb 27 15:08:50 EST 2017
TEAS STAMP	USPTO/RFR-XX.XX.XX.XXX-20 170227150850281018-870183 44-580e7e632182e114ab1ec5 9d8bb962ffe24b08518c37639 9ed11969e61178891d3-N/A-N /A-20170227144932325844

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1960 (Rev 10/2011)

OMB No. 0651-0050 (Exp 07/31/2017)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **87018344** LEAVENWORTH OKTOBERFEST(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/87018344/large>) has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 025 for Baseball caps; Hats; Shirts; T-shirts

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/01/1998 and first used in commerce at least as early as 08/01/1998 , and is now in use in such commerce.

Proposed: Class 025 for Baseball caps; Hats; Shirts; T-shirts

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 08/01/1998 and first used in commerce at least as early as 08/01/1998 , and is now in use in such commerce.

Applicant hereby submits one(or more) specimen(s) for Class 025 . The specimen(s) submitted consists of T-shirt with the applied for mark "LEAVENWORTH OKTOBERFEST" inserted within a banner at the bottom third of an oblong shaped picture with a Bavarian hat on top of the picture, mountains in the background of the picture and with two beer mugs situated over a blue and white checkered base in the foreground. Below the applied for mark "LEAVENWORTH OKTOBERFEST" is situated the organization's name "Projekt Bayern" and location. .

"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce at least as early as the filing date of the application" [for an application based on Section 1(a), Use in Commerce] **OR** **"The substitute (or new, or originally submitted, if appropriate) specimen(s) was/were in use in commerce prior either to the filing of the Amendment to Allege Use or expiration of the filing deadline for filing a Statement of Use"** [for an application based on Section 1(b) Intent-to-Use]. **OR** **"The attached specimen is a true copy of the specimen that was originally submitted with the application, amendment to allege use, or statement of use"** [for an illegible specimen]. [Specimen File1](#)

SIGNATURE(S)

Declaration Signature

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or allegation of use (AOU) unsigned, all statements in the application or AOU and this submission based on the signatory's own knowledge are true, and all statements in the application or AOU and this submission made on information and belief are believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AOU: If the applicant filed an unsigned application under 15 U.S.C. §1051(a) or AOU under 15 U.S.C. §1051(c), the signatory additionally believes that: the applicant is the owner of the mark sought to be registered; the mark is in use in commerce and was in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; **for a collective trademark, collective service mark, collective membership mark application, or certification mark application**, the applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the filing date of the application or AOU; **for a certification mark application**, the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION AND FOR SECTION 66(a)

COLLECTIVE/CERTIFICATION MARK APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. §§ 1051(b), 1126(d), and/or 1126(e), or filed a collective/certification mark application under 15 U.S.C. §1141f(a), the signatory additionally believes that: **for a trademark or service mark application**, the applicant is entitled to use the mark in commerce on or in connection with the goods/services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date; **for a collective trademark, collective service mark, collective membership mark, or certification mark application**, the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date; the signatory is properly authorized to execute the declaration on behalf of the applicant; **for a certification mark application**, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

Signature: /John W Sobba/ Date: 02/27/2017

Signatory's Name: John W Sobba

Signatory's Position: Attorney

Signatory's Phone Number: 2068773382

Request for Reconsideration Signature

Signature: /John W Sobba/ Date: 02/27/2017

Signatory's Name: John W Sobba

Signatory's Position: Attorney

Signatory's Phone Number: 2068773382

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 87018344

Internet Transmission Date: Mon Feb 27 15:08:50 EST 2017

TEAS Stamp: USPTO/RFR-XX.XX.XX.XXX-20170227150850281

018-87018344-580e7e632182e114ab1ec59d8bb

962ffe24b08518c376399ed11969e61178891d3-

N/A-N/A-20170227144932325844



Exhibit G



602 323 799

Application to Form a Nonprofit Corporation

Steps to Register

- ✓ Corporate Name
- ✓ Contact Info
- ✓ Articles of Incorporation
- ✓ Registered Agent
- ✓ Initial Directors
- ✓ Incorporators
- ✓ Signature
- ▶ Confirm Information
- Shopping Cart
- Credit Card
- Print Receipt

Cancel Transaction

Save Transaction

Confirmation

Before completing your order please make sure the application is accurate as your fees may not be refundable once submitted.

Articles of Incorporation

Preferred Name PROJEKT BAYERN ASSOCIATION

Special Name Review Requested

Tenure Perpetual

Purpose of Corporation Any Lawful Purpose

Effective Date of Incorporation Date of Filing

Distribution of Assets In the event of a voluntary dissolution of the corporation the net assets shall be distributed to another like nonprofit corporation organization.

Additional Provisions Attached False

[Click here to Update Articles Of Incorporation](#)

Registered Agent Information

Agent Type Individual
Agent Name Larry Meyer
Address

110 Park Ave
Leavenworth
WA
98826

Mailing Address

same as above

Email Address larrymeyer1@msn.com

Agent Consent Provision Submitter is Registered Agent

[Click here to Update Registered Agent](#)

Initial Directors

Larry Meyer 110 Park Ave
Leavenworth
WA

FILED
SECRETARY OF STATE
SAM REED

APRIL 30, 2009

Application ID: 1426935
PROJEKT BAYERN ASSOCIATION
(Special Name Review Requested)

CORPORATIONS

HOME

CORPORATIONS MENU

SEARCH

04/30/09 1502E42-
001
\$50.00 K #5621
ID: 1693055

Wayne Klenda 98826
12591 Spring Street
Leavenworth
WA
98826

Bob Kelly Box 876
Leavenworth
WA
98826

Phyllis Busse 200 Joseph Street #602
LEAVENWORTH
WA
98826

[Click Here to Edit Initial Directors Information](#)

Incorporators

Larry Meyer 110 Park Ave
Leavenworth
WA
98826

[Click Here to Edit Incorporators Information](#)

Signature

Signature Completed
Signed By Larry Meyer

[Click Here to Go to Signature Page](#)

Contact Information

Contact Name Larry Meyer
Contact Phone (509) 548-6393
Contact Email larrymeyer1@msn.com
Mailing Address 110 Park Ave
Leavenworth
WA
98826

[Click Here to Update Contact Information](#)

Cost

Total Cost \$50.00

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Washington Secretary of State
801 Capitol Way South, PO Box 40234 OLYMPIA WA 98504-0234
(360) 725-0377
[Privacy Policy](#)



CORPORATIONS



HOME



CORPORATIONS MENU



SEARCH

Application to Form a Nonprofit Corporation

Application ID: 1426935
PROJEKT BAYERN ASSOCIATION
(Special Name Review Requested)
Signature Required

Steps to Register

- ✓ Corporate Name
- ✓ Contact Info
- ✓ Articles of Incorporation
- ✓ Registered Agent
- ✓ Initial Directors
- ✓ Incorporators
- ▶ Signature
- ✓ Confirm Information
- ✓ Shopping Cart
- Credit Card
- Print Receipt

Signature

By clicking the continue button below, I certify that I am authorized to file this document on behalf of the above named corporation.

By Submitting this application for filing I am declaring under penalty of perjury that the information contained in the application is true and correct to the best of my knowledge.

I understand that the RCW 43.07.210 provides that knowingly submitting false information to the Secretary of State is punishable as a gross misdemeanor. A gross misdemeanor is punishable by up to one year imprisonment and up to a \$5,000 fine.

Full Name of Submitter Larry Meyer

Cancel Transaction

Save Transaction

View Shopping
Cart



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[Elections & Voting](#) | [International Trade](#) | [Library](#) | [Medals of Merit & Valor](#) | [News Releases](#) | [Oral History](#) | [Productivity Board](#)
[State Flag](#) | [State Seal](#) | [Washington History](#)

Washington Secretary of State
801 Capitol Way South, PO Box 40234 OLYMPIA WA 98504-0234
(360) 725-0377
[Privacy Policy](#)

13

Exhibit H



601 West Riverside Avenue, Suite 1400
Spokane, WA 99201

Phone | 509.324.9256
Fax | 509.323.8979

July 26, 2022

VIA EMAIL AND U.S. MAIL

Cary Sanger
Projekt Bayern Association
P.O. Box 411
Leavenworth, WA 98826-0411
Email: carysanger@icloud.com

**Re: City of Leavenworth 2022 Oktoberfest Celebration
Projekt Bayern Association**

Dear Ms. Sanger:

This firm represents the City of Leavenworth (the “City”) in certain intellectual property matters; we are writing you in your capacity as the registered agent and governor for Projekt Bayern Association. As you are aware, Projekt Bayern (“PB”) contracted with the City for several years in relation to the City’s fall Oktoberfest celebration held in Leavenworth.

Last year, the City terminated the contract with PB. Since that time, PB’s relationship with the City has deteriorated, to the extent that PB has disseminated blatantly untrue information in its public communications. PB has stated that the City is “lying” concerning an Oktoberfest in Leavenworth in 2022 and asserted that PB owns trademark rights to “LEAVENWORTH OKTOBERFEST.” PB has posted billboards, signs, and other advertising stating that “Leavenworth Oktoberfest” will be held in Wenatchee this fall.

What is more, PB has sent the City and at least two third parties cease-and-desist letters, claiming exclusive rights to use “LEAVENWORTH OKTOBERFEST.” PB has gone so far as to assert that the use of “Bavariafest” would infringe PB’s rights, an assertion without legal support.

PB’s statements to the public are untrue and are injurious to the City. At all times in the past, PB used “Leavenworth Oktoberfest” with the permission of the City. PB does not own rights in that usage, and the trademark application PB filed is invalid. The City has recently petitioned for that registration’s cancellation, noting the application’s geographic descriptiveness and the false Section 2(f) statement you signed on behalf of PB. Moreover, PB’s attempt to use “LEAVENWORTH OKTOBERFEST” in connection with an Oktoberfest in Wenatchee is deceptively geographically misdescriptive and deceives Washington consumers.

The City does not dispute PB’s ability to coordinate and manage festivals, or to refer to a festival as an “Oktoberfest.” But the City is injured by PB’s claim to exclusive rights in LEAVENWORTH OKTOBERFEST, and is harmed by PB’s misinformation campaign, as well as PB’s interference with the City’s partners and proposed partners. Moreover, PB still owes the City \$50,000 outstanding from its last engagement with the City.



On behalf of the City, we demand PB cease and desist from its unlawful activities. For clarity, the City demands of PB the following:

- PB must expressly abandon USPTO Reg. No. 5,239,374;
- PB must cease and desist from any use of “Leavenworth” in regard to activities that are not associated with the City of Leavenworth;
- PB must cease and desist from further false statements, and issue a correction withdrawing its past false statements, concerning the City and its 2022 Oktoberfest celebration; and
- PB must meet its payment commitment under its agreement with the City.

We have filed an action in the United States District Court for the Eastern District of Washington to address all these concerns and attach a courtesy copy for your information. Please respond to this letter no later than five (5) days from receipt to affirm your compliance. If we do not hear from you by then, the City will have no choice but to continue with its District Court action.

As noted, we have directed this letter to you in your capacity as the registered agent and governor for PB in its activities to date; please let us know if PB has engaged counsel to represent it in litigation. This letter is not intended to be a full and complete statement of the facts in this matter, or of the City’s rights, and shall not be construed as a waiver of any legal or equitable rights or remedies, all of which are expressly reserved.

Sincerely,

LEE & HAYES, P.C.

A handwritten signature in blue ink that reads "Robert J. Carlson". The signature is fluid and cursive, with the first and last names being more prominent.

Robert J. Carlson

(206) 876-6029

carlson@leehayes.com